

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ERIN M. SUNSERI
Deputy Attorney General
4 State Bar No. 207031
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2071
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

Case No. 2010-64

13 **BRENDA FOCHTMAN**
14 **555 Hillcrest Avenue**
Petoskey, MI 49770

STATEMENT OF ISSUES

15 Applicant.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about October 8, 2008, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nursing License from Brenda
24 Fochtman (Applicant). On or about September 29, 2008, Brenda Fochtman certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on January 26, 2009.

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1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 (b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code.

13 7. Section 2761 of the Code states:

14 The board may take disciplinary action against a certified or licensed nurse or deny an
15 application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the following:

17 (f) Conviction of a felony or of any offense substantially related to the qualifications,
18 functions, and duties of a registered nurse, in which event the record of the conviction shall be
19 conclusive evidence thereof.

20 8. Section 2762 of the Code states:

21 In addition to other acts constituting unprofessional conduct within the meaning of this
22 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
23 chapter to do any of the following:

24 (b) Use any controlled substance as defined in Division 10 (commencing with Section
25 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
26 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
27 himself or herself, any other person, or the public or to the extent that such use impairs his or her
28 ability to conduct with safety to the public the practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription, consumption, or
2 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
3 or the possession of, or falsification of a record pertaining to, the substances described in
4 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
5 thereof.

6 9. California Code of Regulations, title 16, section 1444, states, in pertinent part:

7 A conviction or act shall be considered to be substantially related to the qualifications,
8 functions or duties of a registered nurse if to a substantial degree it evidences the present or
9 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
10 safety, or welfare.

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 **(March 1, 2006 Criminal Conviction for DUI on January 27, 2006)**

13 10. Applicant's application is subject to denial under sections 2736, 2761, and 480,
14 subdivision (a) (1) in that on or about March 1, 2006, in a criminal proceeding entitled State of
15 Michigan v. Brenda Kay Fochtman in State of Michigan, 90th Judicial District, Emmett County
16 Case No. 06-107, Applicant was convicted by her plea of guilty to PACC #257.6251-A (operating
17 while intoxicated), a misdemeanor. The circumstances are as follows:

18 a. On or about January 27, 2006, Applicant was arrested and charged with a
19 violation of PACC #750.81D1 (assaulting/resisting/obstructing a police officer); and a violation
20 of PACC #257.6251-A (operate while intoxicated). Applicant's BAC was .30%.

21 b. On or about March 1, 2006, Applicant was sentenced as follows: 36 days in jail
22 (with credit given for one day, service of five days of community service work in lieu of five days
23 jail, and 30 days held in abeyance); six months probation; \$1,205.00 in fees and costs; ordered not
24 to use, possess, or consume alcohol or controlled substances; submit to testing; obtain a substance
25 abuse assessment and follow recommendations; and attend an alcohol safety class.

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P R A Y E R

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Brenda Fochtman for a Registered Nursing License;
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

8/6/09

Louise R. Bailey

Louise R. Bailey, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2009803946
statement of issues.rtf